

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO. 7563 OF 2004.

Kanaiyalal Jethalal Pujara.....

.... Petitioner.

V/s

Jitendra Raichand Kothari

...

Respondent.

Shri K. J. Pujara party -in-person.

Shri M. H. A. Sayyid for respondents.

CORAM: R.M.S. KHANDEPARKAR, J.

13-12-2004

PC:

Heard learned advocate for parties.

Perused the records. The petitioner challenges the orders passed by the Courts below dismissing the notice of motion taken out by the petitioner as well as the appeal filed by him. The contention of the petitioner is that the respondent is trespasser in the suit premises and has no right in the suit premises and therefore he is not entitled to file a suit seeking declaration and leasehold rights and consequential reliefs in the Small Cause Court more particularly when the petitioner himself has already filed a suit for his eviction from the suit premises in the City Civil Court. Both the Courts below have rejected the contention about non-maintainability of the suit as the pleadings in the plaint

disclose sufficient cause of action for filing the suit. Whether the respondent is really a trespasser and not a tenant, is to be decided based on evidence to be led by the parties. It is too premature for the Court to pronounce anything regarding the status of the party at the outset and even before the parties are allowed to lead their evidence in support of rival contentions. Considering the same no fault can be found with the orders passed by the Courts below dismissing the contention of the petitioner about non maintainability of the suit. Certainly if the petitioner is able to establish that the respondent is not a tenant in respect of suit premises, the necessary consequences would follow and the suit could be liable to be dismissed on that count. However even before giving an opportunity to the respondent to prove his contention, he cannot be non suited merely on the basis of plea sought to be raised by the petitioner that the respondent is a trespasser. Considering the same no fault can be found with the concurrent findings arrived at about the failure on the part of the petitioner to establish non maintainability of the suit and hence no interference is called for in exercise of writ jurisdiction under article 227 of the Constitution. Therefore the writ petition is rejected.